

## **REMARKS**

### **Status of the Claims**

According to the Advisory Action mailed July 21, 2006, Applicants' amendments mailed December 21, 2006, were not entered by the Patent and Trademark Office ("PTO"). Therefore, the pending claims revert to their status prior to the Applicants' December 21, 2006, amendment.

In this paper, Claim 1 is currently amended. Claims 16-24 were previously withdrawn and Claims 7-8 and 25 were previously cancelled. Therefore with this amendment, Claims 1-6 and 9-15 are currently pending and under examination, all of which stand rejected.

Claim 1 is amended herein as follows. First, Claim 1 is amended to recite the at least one polyolefin is selected from a copolymer of ethylene and a linear aliphatic  $\alpha$ -olefin. Support for this amendment is found in the specification at least at page 3, 1<sup>st</sup> paragraph; and the Example at page 15. Specifically, this amendment is also supported by the disclosure of both ethylene-1-octene co-polymers (DOW DSH 1500 and DOW DSH 8501) and ethylene-1-butene co-polymers (EXXON EXACT 4041 and EXXON EXACT 4033) in the patent specification (page 3, 1<sup>st</sup> paragraph). DOW DSH 1500 and DOW DSH 8501 are disclosed as ethylene-1-octene copolymers in U.S. Patent No. 6,187,424 (*see*: Table, col. 21), a copy of which was filed with Applicants' amendment mailed December 21, 2006. EXXON EXACT 4041 and EXXON EXACT 4033 are disclosed as ethylene-1-butene co-polymers in the Material Safety Data Sheet (MSDS) for poly(ethylene-co-1-butene), a copy of which also was filed with Applicants' amendments mailed December 21, 2006.

Second, Claim 1 is amended to delete the recitation of the particular cross-linking agents, which are recited in Claim 11.

Finally, Claim 1 is amended by replacing "a" with "i" and replacing "b" with "ii", to avoid any confusion with copolymers "a" and "b" recited in Claims 4-6. Respectfully, Applicants maintain that the amendment to Claim 1 does not introduce new matter, and does not raise new issues that would require further consideration and/or search.

### **Objection to Claim 11**

In the Final Office Action mailed March 7, 2006, the PTO objected to Claim 1 as being of improper dependent form. According to the PTO, Claim 1 already contains the features of Claim 11. Claim 1 is amended herein to delete the recitation of the particular cross-linking agents, which are recited in Claim 11. Applicants' respectfully maintain that Claim 11 is now in proper dependent form. Accordingly, Applicants' request that this objection be withdrawn.

### **Rejection Under 35 U.S.C. § 102(e)**

In the Final Office Action mailed March 7, 2006, Claims 1-4, 6, and 11-13 were rejected by the PTO under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,254,956 to Kjellqvist et al. ("*Kjellqvist*"). It appears to be the position of the PTO that *Kjellqvist* teaches a floor covering comprising at least one elastomer as a polymeric binder based on at least one polyolefin (density  $<0.910 \text{ g/cm}^3$ ), and at least one grafted copolymer, wherein the grafted copolymer is maleic acid anhydride grafted HD polyethylene, and co-crosslinking agent of an acrylate (Office Action, page 2, last paragraph). The PTO states that Claims 1 and 12 are anticipated by this disclosure (Final Office Action, page 2, last paragraph). Respectfully, Applicants maintain that the amendment to Claim 1 obviates this rejection for at least the following reasons.

*Kjellqvist* is drawn to a floor, wall or ceiling covering which comprises one or more substantially random **interpolymers** prepared by co-polymerizing the following **monomers**:

**monomer 1:** one or more  $\alpha$ -olefin monomers;

**monomer 2:** one or more vinylidene aromatic monomers and/or one or more hindered aliphatic or cycloaliphatic vinylidene monomers; and

**optionally, monomer 3:** other polymerizable ethylenically unsaturated monomer(s) (*Kjellqvist*, col. 2, lines 24-30).

Thus, *Kjellqvist*'s interpolymers require co-polymerizing **monomer 1** with **monomer 2**, and optionally co-polymerizing **1** and **2** with **monomer 3**. Indeed, TABLE 1C (col. 19) and TABLES 3-5 (cols. 21-24) of *Kjellqvist* exemplify **monomer 2** as **styrene** and exemplify *Kjellqvist*'s substantially random interpolymers as various interpolymers of ethylene (**monomer**

1) and styrene (**monomer 2**), as indicated by the term “ESI” (ethylene/styrene interpolymers) used in these tables.

Respectfully, Applicants note that the polyolefin of Claim 1 is absent a constituent olefin monomer corresponding to *Kjellqvist*’s monomer 2. Regarding monomer 2, *Kjellqvist* requires “*vinylidene aromatic monomers*” (col. 3, lines 6-38), or/or “*hindered aliphatic or cycloaliphatic vinylidene monomers*” (col. 3, line 38-col. 4, line 5), neither of which is encompassed in the polyolefin of Claim 1. The “vinylidene aromatic monomers” of *Kjellqvist*’s monomer 2 require a “phenyl group or a phenyl group substituted with [various substituents]...” (col. 3, lines 22-24), while the “hindered aliphatic or cycloaliphatic vinylidene monomers” specifically excludes “... $\alpha$ -olefin monomers containing from 2 to about 20 carbon atoms and having a linear aliphatic structure such as propylene, butene-1, hexene-1 and octene-1...” (col. 3, lines 58-61).

Applicants note that *Kjellqvist* also discloses that “[t]he floor, wall or ceiling covering of the present invention may contain one or more **other polymers** in addition to one or more of the above-described substantially random interpolymers” (emphasis added; col. 7, lines 19-22), and that these “additional, optional polymer(s)” can be **blended** with (col. 7, lines 28-30), or can be used in the same or different layer (col. 7, lines 30-33) as the interpolymers of *Kjellqvist* noted above. (See: col. 7, lines 19-40.) Further, TABLE 2 (col. 19) and TABLES 3-5 (cols. 21-24) of *Kjellqvist* **exemplify** these other polymers to include such materials as ethylene-1-octene, high density polyethylene (HDPE), low density polyethylene (LDPE), and maleic anhydride grafted polyethylene.

Respectfully, Applicants believe that the PTO misinterprets *Kjellqvist* by failing to distinguish between *Kjellqvist*’s **interpolymer** which constitutes a copolymer of monomer 1 with monomer 2, and *Kjellqvist*’s optional, “**other polymers**” that can be blended with the 1/2 interpolymer. The fact that homopolymers or copolymers of ethylene and other  $\alpha$ -olefins (col. 11, lines 34-40), can be used as the optional, “other polymers” to prepare blends of *Kjellqvist*, as illustrated in TABLES 3-5 (cols. 21-24) is not relevant, because the floor covering of Applicants’ Claim 1 is devoid of *Kjellqvist*’s monomer 2.

Respectfully, Applicants maintain that *Kjellqvist* neither teaches nor suggests the claimed invention, for at least the reasons provided. Accordingly, Applicants request that the rejection of

Claims 1-4, 6, and 11-13 under 35 U.S.C. § 102(e) as being anticipated by *Kjellqvist*, be withdrawn, and these claims be allowed.

### **The Rejections Under 35 U.S.C. § 103**

Claims 5 and 9-10. Claims 5 and 9-10 were rejected by the PTO under 35 U.S.C. § 103(a) as being obvious over *Kjellqvist*. Respectfully, this rejection is obviated by the above amendment to Claim 1.

As noted above, *Kjellqvist's* interpolymers require co-polymerizing **monomer 1** (one or more  $\alpha$ -olefin monomers) with **monomer 2** (one or more vinylidene aromatic monomers and/or one or more hindered aliphatic or cycloaliphatic vinylidene monomers), and optionally co-polymerizing 1 and 2 with **monomer 3**. Respectfully, Applicants assert that the polyolefin of Claims 5 and 9-10 is absent a constituent olefin monomer corresponding to *Kjellqvist's* monomer 2. Further, Applicants maintain that *Kjellqvist* offers no suggestion, and provides no motivation, to completely eliminate one of the required constituent olefin monomers.

Accordingly, *Kjellqvist* does not teach or suggest every element of the claimed invention. Respectfully, Applicants request that the rejection of Claims 5 and 9-10 under 35 U.S.C. § 103(a) in view of *Kjellqvist* be withdrawn, and these claims allowed.

Claims 14-15. Claims 14-15 were rejected by the PTO under 35 U.S.C. § 103(a) as being obvious over *Kjellqvist* in view of U.S. Patent No. 6,399,689 to Scarlette ("*Scarlette*"). Respectfully, this rejection is obviated by the above amendment to Claim 1.

The interpolymer of *Kjellqvist* requires co-polymerizing **monomer 1** (one or more  $\alpha$ -olefin monomers) with **monomer 2** (one or more vinylidene aromatic monomers and/or one or more hindered aliphatic or cycloaliphatic vinylidene monomers). Respectfully, Applicants assert that the polyolefin of Claims 14-15 is absent a constituent olefin monomer corresponding to *Kjellqvist's* monomer 2. Further, Applicants maintain that neither *Kjellqvist* nor *Scarlette*, either alone or in combination, offer any suggestion, and provide no motivation, to completely eliminate one of the required constituent olefin monomers.

Accordingly, *Kjellqvist* and *Scarlette*, either alone or in combination, do not teach or suggest every element of the claimed invention. Respectfully, Applicants request that the

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rejection of Claims 14-15 under 35 U.S.C. § 103(a) over the combination of *Kjellqvist* and *Scarlette*, be withdrawn, and these claims be allowed.

**CONCLUSION**

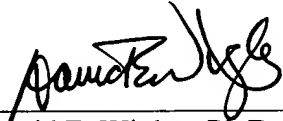
Respectfully, Applicants maintain that this Amendment and Response under 37 C.F.R. § 1.114 places the claims in condition for allowance, and such action is respectfully requested. Applicants reserve the right to subsequently take up prosecution of the claims originally filed in this application in continuation, continuation-in-part, and/or divisional applications.

No additional fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required, or credit any overpayment, to Deposit Account Number 09-0528, referencing matter number 41461.0010.0.

Early and favorable consideration is respectfully solicited. If the Examiner believes any informalities remain in the application that can be resolved by telephone interview, a telephone call to the undersigned attorney is requested.

Respectfully submitted,

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Date

  
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